



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

January 31, 2013

Mr. Steven E. Meyer  
Assistant City Attorney  
Legal Division  
Arlington Police Department  
P.O. Box 1065, Mail Stop 04-0200  
Arlington, Texas 76004-1065

OR2013-01783

Dear Mr. Meyer:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 477709 (PD Reference 9514).

The City of Arlington (the "city") received a request for specified information pertaining to two specified addresses from a specified time period. You claim the submitted information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Section 552.108(a)(1) of the Government Code excepts from disclosure "[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if . . . release of the information would interfere with the detection, investigation, or prosecution of crime[.]" Gov't Code § 552.108(a)(1). A governmental body must reasonably explain how release of the information at issue would interfere with the detection, investigation, or prosecution of crime. *See id.* § 552.301(e)(1)(A) (governmental body must provide comments explaining why exceptions raised should apply to information requested); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You inform us the information submitted as Exhibit C and the audio recordings submitted as Exhibit F relate to a pending criminal incident that has not received a final disposition by the appropriate court of law. Based on your representation and our review, we find the release of Exhibit C and the audio recording related to the incident at issue in Exhibit C, which we

have indicated in Exhibit F, would interfere with the detection, investigation or prosecution of crime. See *Houston Chronicle Publ'g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist.] 1975) (court delineates law enforcement interests that are present in active cases), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976). Thus, section 552.108(a)(1) is applicable to this information. We note, however, none of the remaining audio recordings in Exhibit F relate to the incident at issue in Exhibit C. Further, you have not otherwise demonstrated the release of the remaining information in Exhibit F would interfere with the detection, investigation, or prosecution of crime. See Gov't Code § 552.108(a)(1). Therefore, we find you have failed to demonstrate the applicability of section 552.108(a)(1) to the remaining audio recordings in Exhibit F, and the city may not withhold them on that basis.

We note section 552.108 does not except from disclosure “basic information about an arrested person, an arrest, or a crime.” See *id.* § 552.108(c). Section 552.108(c) refers to the basic front-page offense and arrest information held to be public in *Houston Chronicle*. See 531 S.W.2d at 186-88; see also Open Records Decision No. 127 at 3-4 (1976) (summarizing types of information deemed public by *Houston Chronicle*). Accordingly, with the exception of basic information, which must be released, the city may withhold Exhibit C and the audio recording related to the incident at issue in Exhibit C we have indicated in Exhibit F under section 552.108(a)(1) of the Government Code.<sup>1</sup>

Section 552.101 of the Government Code excepts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” Gov't Code § 552.101. This section encompasses the common-law informer's privilege, which has long been recognized by Texas courts. See *Aguilar v. State*, 444 S.W.2d 935, 937 (Tex. Crim. App. 1969). The informer's privilege protects the identities of persons who report activities over which the governmental body has criminal or quasi-criminal law-enforcement authority, provided that the subject of the information does not already know the informer's identity. See Open Records Decision Nos. 515 at 3 (1998), 208 at 1-2 (1978). The privilege protects the identities of individuals who report violations of statutes to the police or similar law-enforcement agencies, as well as those who report violations of statutes with civil or criminal penalties to “administrative officials having a duty of inspection or of law enforcement within their particular spheres.” See Open Records Decision No. 279 at 2 (1981) (citing 8 John H. Wigmore, *Evidence in Trials at Common Law*, § 2374, at 767 (J. McNaughton rev. ed. 1961)). The report must be of a violation of a criminal or civil statute. See Open Records Decision Nos. 582 at 2 (1990), 515 at 4-5. The privilege excepts the informer's statement only to the extent necessary to protect the informer's identity. See Open Records Decision No. 549 at 5 (1990).

---

<sup>1</sup>As our ruling for this information is dispositive, we need not address your remaining arguments against its disclosure.

You seek to withhold the information submitted as Exhibit E and the remaining audio recordings in Exhibit F under the common-law informer's privilege. You inform us the information at issue reveals the identities of individuals who reported alleged violations of law to the city's police department (the "department"). You also inform us the department is responsible for enforcing the laws at issue, which are punishable by criminal or civil penalties. You do not inform us the subjects of the complaints know the identities of the informers. We note that in some circumstances, where an oral statement is captured on tape and the voice of the informer is recognizable, it may be necessary to withhold the entire audio statement to protect the informer's identity. Open Records Decision No. 424 at 2 (1986). Therefore, we conclude the city may withhold the informers' identifying information we have marked in Exhibit E and the audio recordings we have indicated in Exhibit F in their entirety under section 552.101 of the Government Code in conjunction with the common-law informer's privilege.<sup>2</sup> However, we find the remaining information at issue either reveals the subjects of the complaints at issue already know the identities of the informers, or does not identify individuals who reported violations of criminal or civil statutes. Consequently, you have failed to demonstrate the applicability of the common-law informer's privilege to the remaining information in Exhibit E and the remaining audio recordings in Exhibit F, and this information may not be withheld under section 552.101 on that basis.

Section 552.101 of the Government Code also encompasses the doctrine of common-law privacy, which protects information that (1) contains highly intimate or embarrassing facts, the publication of which would be highly objectionable to a reasonable person, and (2) is not of legitimate concern to the public. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). To demonstrate the applicability of common-law privacy, both elements of the test must be established. *Id.* at 681-82. The types of information considered intimate or embarrassing by the Texas Supreme Court in *Industrial Foundation* included information relating to sexual assault, pregnancy, mental or physical abuse in the workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs. *Id.* at 683. This office has also found that some kinds of medical information or information indicating disabilities or specific illnesses are excepted from required public disclosure under common-law privacy. See Open Records Decision No. 455 (1987) (prescription drugs, illnesses, operations, and physical handicaps). Generally, only highly intimate information that implicates the privacy of an individual is withheld. However, in certain instances, where it is demonstrated that the requestor knows the identity of the individual involved, as well as the nature of certain incidents, the submitted information must be withheld in its entirety to protect the individual's privacy.

You claim the information submitted as Exhibit D and the remaining audio recordings in Exhibit F are protected in their entirety by common-law privacy. In this instance, however,

---

<sup>2</sup>As our ruling for this information is dispositive, we need not address your remaining argument against its disclosure.

you have not demonstrated, nor does it otherwise appear, this is a situation in which this information must be withheld in its entirety on the basis of common-law privacy. However, upon review, we agree that portions of the information at issue are highly intimate or embarrassing and of no legitimate public concern. Accordingly, the city must withhold the information we have marked in Exhibit D and the information we have indicated in the remaining audio recordings in Exhibit F under section 552.101 of the Government Code in conjunction with common-law privacy. The city has failed to demonstrate, however, how any of the remaining information at issue is highly intimate or embarrassing and not of legitimate public concern. Therefore, the city may not withhold any of this information under section 552.101 in conjunction with common-law privacy.

We note portions of the remaining information reveal license plate numbers subject to section 552.130(a)(2) of the Government Code.<sup>3</sup> This section excepts from disclosure information related to "a motor vehicle title or registration issued by an agency of this state or another state or country[.]" Gov't Code § 552.130(a)(2). Accordingly, the city must withhold the license plate numbers we have marked in the remaining information in Exhibits D and E, and indicated in the remaining audio recordings in Exhibit F, under section 552.130(a)(2) of the Government Code.

In summary, with the exception of basic information, which must be released, the city may withhold Exhibit C and the audio recording related to the incident at issue in Exhibit C we have indicated in Exhibit F under section 552.108(a)(1) of the Government Code. The city may withhold the informers' identifying information we have marked in Exhibit E and the audio recordings we have indicated in Exhibit F in their entirety under section 552.101 of the Government Code in conjunction with the common-law informer's privilege. The city must withhold the information we have marked in Exhibit D and the information we have indicated in the remaining audio recordings in Exhibit F under section 552.101 of the Government Code in conjunction with common-law privacy. The city must withhold the license plate numbers we have marked in the remaining information in Exhibits D and E, and indicated in the remaining audio recordings in Exhibit F, under section 552.130(a)(2) of the Government Code. The city must release the remaining information.

This letter ruling is limited to the particular information at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other information or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at [http://www.oag.state.tx.us/open/index\\_orl.php](http://www.oag.state.tx.us/open/index_orl.php),

---

<sup>3</sup>The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

or call the Office of the Attorney General's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Act must be directed to the Cost Rules Administrator of the Office of the Attorney General, toll free at (888) 672-6787.

Sincerely,

A handwritten signature in black ink, appearing to read 'KLC', with a long horizontal flourish extending to the right.

Kenneth Leland Conyer  
Assistant Attorney General  
Open Records Division

KLC/bhf

Ref: ID# 477709

Enc. Submitted documents

c: Requestor  
(w/o enclosures)